



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XD814

Takes of Marine Mammals Incidental to Specified Activities; Land Survey Activities within the Eastern Aleutian Islands Archipelago, Alaska, 2015

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental harassment authorization; request for comments.

SUMMARY: NMFS has received an application from the Bureau of Land Management (BLM) to take marine mammals, by harassment incidental to conducting a one-day field-based land survey of cultural sites located on a small island within the eastern Aleutian Islands archipelago for a land claim made by an Alaska Regional Native Corporation under the Alaska Native Claims Settlement Act. The proposed date for this action would be on one day between the periods of June 1 through July 31, 2015. Per the Marine Mammal Protection Act, NMFS is requesting comments on the proposal to issue an Authorization to BLM to incidentally take, by Level B harassment only, one species of marine mammal during the specified activity.

DATES: NMFS must receive comments and information on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Address comments on the application to Jolie Harrison, Division Chief, Permits and Conservation Division, Office of Protected Resources, National Marine

Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. The mailbox address for providing email comments is *ITP.Cody@noaa.gov*. Please include 0648-XD818 in the subject line. Comments sent via email to *ITP.Cody@noaa.gov*, including all attachments, must not exceed a 25-megabyte file size. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here.

Instructions: All submitted comments are a part of the public record and NMFS will post them to <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm> without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

To obtain an electronic copy of the application containing a list of the references used in this document, write to the previously mentioned address, telephone the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or visit the internet at: <http://www.nmfs.noaa.gov/pr/permits/incidental/research.htm>.

NMFS will prepare an environmental assessment (EA) in accordance with the National Environmental Policy Act to evaluate the environmental effects related to the scope of our Federal action, which is the proposed issuance of an Authorization to BLM for their proposed land survey activities. This notice presents detailed information on the scope of NMFS' Federal action under NEPA (*i.e.*, the proposed Authorization including mitigation measures and monitoring) and NMFS will consider comments submitted in response to this notice for the preparation the EA. Information in BLM's application and this notice collectively provide the environmental information related to proposed issuance of the Authorization for public review and comment.

FOR FURTHER INFORMATION CONTACT: Jeannine Cody, NMFS, Office of Protected Resources, NMFS (301) 427-8401.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(D) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals of a species or population stock, by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if, after NMFS provides a notice of a proposed authorization to the public for review and comment: (1) NMFS makes certain findings; and (2) the taking is limited to harassment.

An Authorization shall be granted for the incidental taking of small numbers of marine mammals if NMFS finds that the taking will have a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). The Authorization must also set forth the permissible methods of taking; other means of effecting the least practicable adverse impact on the species or stock and its habitat; and requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to

injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or

(ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On September 8, 2014, NMFS received an application from BLM requesting that we issue an Authorization for the take of marine mammals, incidental to conducting one field-based land survey for a land claim of cultural sites located on a small island in the eastern Aleutian Islands archipelago. BLM must conduct the land survey under the Alaska Native Claims Settlement Act of 1971, as amended (ANCSA; 43 USC 1601-1624). NMFS determined the application complete and adequate on February 17, 2015.

BLM proposes to conduct one field-based land survey of a land claim made pursuant to section 14(h)(1) of the ANCSA by an Alaska Native Regional Corporation. The land survey may temporarily disturb Steller sea lions (*Eumetopias jubatus*) hauled out at the selected cultural site. BLM proposes to complete the land survey within one day between June 1 and July 31, 2015.

BLM would conduct the proposed activity within the vicinity of a major Steller sea lion haulout site identified in the regulations at 50 CFR 226.202 and the following aspects of the proposed activity would likely to result in the take of marine mammals: noise generated by vessel approaches and departures; noise generated by personnel while conducting the land survey; and human presence during the proposed activity. Thus, NMFS anticipates that take, by Level B harassment only of one species of marine mammal could result from the specified activity. NMFS anticipates that take by Level B

Harassment only, of individuals of Steller sea lions only would result from the specified activity.

Description of the Specified Activity

Overview

BLM must conduct the land survey to support conveyance of existing cemetery sites and historical places to an Alaska Native Regional Corporation as required under the ANCSA. Once BLM concludes the survey no additional visits would be necessary for the proposed action.

Dates and Duration

BLM would complete the survey within one day (approximately 6-10 hours) between June 1 and July 31, 2015. Thus, the proposed Authorization, if issued, would be effective from June 1, 2015 through July 31, 2015. NMFS refers the reader to the Detailed Description of Activities section later in this notice for more information on the scope of the proposed activities.

Specified Geographic Region

BLM's application contains information on sensitive archaeological site locations prohibited from disclosure to the public under the National Historic Preservation Act of 1966, as amended. The island is small (less than 5 acres), extremely rugged, and uninhabited by people. This notice will describe the specified geographic region as cultural sites located on a small island in the eastern Aleutian Islands archipelago.

Detailed Description of Activities

BLM proposes to conduct the land survey with a small group of no more than four people who would use a global position system (GPS) unit to determine the locational accuracy of the selected cultural site. After selecting the placement location for the survey marker, BLM surveyors would use shovels, digging bars, and mallets to set a group of official U.S. survey markers into the ground. BLM does not plan to use any power tools to conduct the land survey.

BLM personnel would access the selected cultural sites using two types of boats: a mid-sized marine vessel (approximately 15 meters (m); 50 feet (ft) in length) and a small skiff. The main vessel would approach the remote island at a speed of approximately 8 knots (kt) (9.2 miles per hour) and would launch the skiff to cross the shallower waters immediately surrounding the small island in the eastern Aleutian Islands archipelago.

Once on land, surveyors would walk to the survey sites to conduct their activities. BLM does not propose to use any type of motorized vehicles on the small island.

There is a possibility that BLM would need to access the island by helicopter or sea plane, if they determine that accessing the island by sea would not be feasible due to weather or scheduling constraints. However, the likelihood of BLM using this mode of transit is extremely low given the high expense involved with chartering aircraft.

Description of Marine Mammals in the Area of the Specified Activity

Table 1 in this notice provides the following information: all marine mammal species with possible or confirmed occurrence in the proposed survey areas on land; information on those species' regulatory status under the MMPA and the Endangered

Species Act of 1973 (16 U.S.C. 1531 *et seq.*); abundance; occurrence and seasonality in the activity area. NMFS refers the public the 2014 NMFS Marine Mammal Stock Assessment Report available online at: <http://www.nmfs.noaa.gov/pr/sars/species.htm> for further information on the biology and distribution of these species. Based on recent survey reports, there are no other species of marine mammals present in the action area (BLM, Pers. Comm.)

Table 1 - General information on marine mammals that could potentially haul out in the proposed cultural site on a small island within the eastern Aleutian Islands archipelago, June through July, 2015.

Species	Stock Name	Regulatory Status ^{1, 2}	Stock/Species Abundance ³	Occurrence and Range	Season
Steller sea lion (<i>Eumetopias jubatus</i>)	Western U.S.	MMPA – D, S ESA - T	82,516	common	Winter / Spring
Steller sea lion (<i>Eumetopias jubatus</i>)	Eastern U.S.	MMPA – D, S ESA - DL	60,131 - 74,448	uncommon	Unknown

¹ MMPA: D = Depleted, S = Strategic, NC = Not Classified.

² ESA: EN = Endangered, T = Threatened, DL = Delisted, NL = Not listed.

³ 2014 NMFS Stock Assessment Report (Allen and Angliss, 2015).

Western Distinct Population Segment (DPS) of Steller sea lions

NMFS categorizes the western DPS of Steller sea lion as a strategic stock and depleted under the MMPA and endangered under the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et. seq.*). The latest abundance estimate for the western Distinct Population Segment (DPS) of Steller sea lions is 82,516 animals (Allen and Angliss, 2015).

Eastern DPS of Steller sea lions

The eastern DPS includes animals born east of Cape Suckling, AK (144° W) and the latest abundance estimate for the stock is 60,131 to 74,448 animals (Allen and Angliss, 2015). Steller sea lions range along the North Pacific Rim from northern Japan to California (Loughlin *et al.*, 1984), with centers of abundance and distribution in the Gulf of Alaska and Aleutian Islands, respectively. The species is not known to migrate,

but individuals disperse widely outside of the breeding season (late May through early July), thus potentially intermixing with animals from other areas. Recently, Jemison *et al.* (2013) summarized that there is regular movement of Steller sea lions from the western DPS (males and females equally) and eastern DPS (almost exclusively males) across the DPS boundary at Cape Suckling, AK. However, the proposed land survey location is over 1,000 kilometers from the DPS boundary and NMFS expects that few if any Steller sea lions from the eastern DPS would be present on the small island.

Steller Sea Lion Critical Habitat

Under the ESA, NMFS has designated critical habitat for Steller sea lions based on the location of terrestrial rookery and haulout sites, spatial extent of foraging trips, and availability of prey items (50 CFR 226.202). Critical habitat includes a terrestrial zone that extends 0.9 km (3,000 ft) landward from the baseline or base point of a major haulout in Alaska. Critical habitat includes an air zone that extends 0.9 km (3,000 ft) above the terrestrial zone of a major haulout in Alaska, measured vertically from sea level. Critical habitat includes an aquatic zone that extends 20 nautical miles (37 km; 23 miles (mi)) seaward in state and federally managed waters from the baseline or basepoint of a major haulout in Alaska west of 144° W longitude. BLM's proposed action falls within an area designated as a major haulout for Steller sea lions.

Other Marine Mammals in the Proposed Action Area

The BLM, in collaboration with the Alaska Department of Fish and Game, has not encountered any other species of marine mammal (*e.g.*, the northern fur seal, (*Callorhinus ursinus*)) hauled out on the small island in the eastern Aleutian Islands archipelago during the course of previous surveying activities within the area over the

past 13 years (ADGF, *Pers. Comm.*). NMFS independently evaluated the likelihood of northern fur seal presence in the action area using the Ocean Biogeographic Information System Spatial Ecological Analysis of Megavertebrate Populations viewer (OBIS SEAMAP, 2015) and found no records of observations of northern fur seals within the proposed action area. Thus, NMFS will not consider this species further in this notice.

Potential Effects of the Specified Activities on Marine Mammals

This section includes a summary and discussion of the ways that the types of stressors associated with the specified activity (*e.g.*, personnel presence) have been observed to impact marine mammals. This discussion may also include reactions that NMFS considers to rise to the level of a take and those that we do not consider to rise to the level of a take. This section serves as a background of potential effects and does not consider either the specific manner in which the applicant will carry out the activity or the mitigation that will be implemented, and how either of those will shape the anticipated impacts from this specific activity. The “Estimated Take by Incidental Harassment” section later in this document will include a quantitative analysis of the number of individuals that NMFS expects BLM to take during this activity. The “Negligible Impact Analysis” section will include the analysis of how this specific activity would impact marine mammals. NMFS will consider the content of the following sections: Estimated Take by Incidental Harassment; Proposed Mitigation; and Anticipated Effects on Marine Mammal Habitat, to draw conclusions regarding the likely impacts of this activity on the reproductive success or survivorship of individuals—and from that consideration—the likely impacts of this activity on the affected marine mammal populations or stocks.

Potential Effects of Human Presence on Marine Mammals

The appearance of BLM surveyors may have the potential to cause Level B harassment of Steller sea lions hauled out on the small island in the proposed action area. Disturbance includes a variety of effects, including subtle to conspicuous changes in behavior, movement, and displacement. Disturbance may result in reactions ranging from an animal simply becoming alert to the presence of the surveyors (*e.g.*, turning the head, assuming a more upright posture) to flushing from the haul-out site into the water. NMFS does not consider the lesser reactions to constitute behavioral harassment, or Level B harassment takes, but rather assumes that pinnipeds that move greater than 1 meter (m) (3.3 feet (ft)) or change the speed or direction of their movement in response to the presence of surveyors are behaviorally harassed, and thus subject to Level B taking. Animals that respond to the presence of surveyors by becoming alert, but do not move or change the nature of locomotion as described, are not considered to have been subject to behavioral harassment.

Reactions to human presence, if any, depend on species, state of maturity, experience, current activity, reproductive state, time of day, and many other factors (Richardson *et al.*, 1995; Wartzok *et al.*, 2004; Southall *et al.*, 2007; Weilgart, 2007). These behavioral reactions are often shown as: changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior; avoidance of areas; and/or flight responses (*e.g.*, pinnipeds flushing into the water from haul-outs or rookeries). If a marine mammal does react briefly to human presence by changing its behavior or moving

a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if visual stimuli from human presence displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.*, Lusseau and Bejder, 2007; Weilgart, 2007).

Disturbances resulting from human activity can impact short- and long-term pinniped haul out behavior (Renouf *et al.*, 1981; Schneider and Payne, 1983; Terhune and Almon, 1983; Allen *et al.*, 1984; Stewart, 1984; Suryan and Harvey, 1999; Mortenson *et al.*, 2000; and Kucey and Trites, 2006). Numerous studies have shown that human activity can flush harbor seals off haulout sites (Allen *et al.*, 1984; Calambokidis *et al.*, 1991; Suryan and Harvey, 1999; and Mortenson *et al.*, 2000) or lead to Hawaiian monk seals (*Monachus schauinslandi*) avoidance of beach areas. The Hawaiian monk seal (*Monachus schauinslandi*) avoiding beaches (Kenyon, 1972). In one case, human disturbance appeared to cause Steller sea lions to desert a breeding area at Northeast Point on St. Paul Island, Alaska (Kenyon, 1962).

In cases where vessels actively approached marine mammals (*e.g.*, whale watching or dolphin watching boats), scientists have documented that animals exhibit altered behavior such as increased swimming speed, erratic movement, and active avoidance behavior (Bursk, 1983; Acevedo, 1991; Baker and MacGibbon, 1991; Trites and Bain, 2000; Williams *et al.*, 2002; Constantine *et al.*, 2003), reduced blow interval (Ritcher *et al.*, 2003), disruption of normal social behaviors (Lusseau, 2003; 2006), and the shift of behavioral activities which may increase energetic costs (Constantine *et al.*, 2003; 2004).

In 1997, Henry and Hammil (2001) conducted a study to measure the impacts of small boats (*i.e.*, kayaks, canoes, motorboats and sailboats) on harbor seal haulout behavior in Métis Bay, Quebec, Canada. During that study, the authors noted that the most frequent disturbances (n=73) were caused by lower speed, lingering kayaks, and canoes (33.3 percent) as opposed to motorboats (27.8 percent) conducting high speed passes. The seal's flight reactions could be linked to a surprise factor by kayaks-canoes which approach slowly, quietly and low on water making them look like predators. However, the authors note that once the animals were disturbed, there did not appear to be any significant lingering effect on the recovery of numbers to their pre-disturbance levels. In conclusion, the study showed that boat traffic at current levels has only a temporary effect on the haulout behavior of harbor seals in the Métis Bay area.

In 2004, Johnson and Acevedo-Gutierrez (2007) evaluated the efficacy of buffer zones for watercraft around harbor seal haulout sites on Yellow Island, Washington. The authors estimated the minimum distance between the vessels and the haul-out sites; categorized the vessel types; and evaluated seal responses to the disturbances. During the course of the seven-weekend study, the authors recorded 14 human-related disturbances which were associated with stopped powerboats and kayaks. During these events, hauled out seals became noticeably active and moved into the water. The flushing occurred when stopped kayaks and powerboats were at distances as far as 453 and 1,217 ft (138 and 371 m) respectively. The authors note that the seals were unaffected by passing powerboats, even those approaching as close as 128 ft (39 m), possibly indicating that the animals had become tolerant of the brief presence of the vessels and ignored them. The authors reported that on average, the seals quickly recovered from the disturbances and returned

to the haulout site in less than or equal to 60 minutes. Seal numbers did not return to pre-disturbance levels within 180 minutes of the disturbance less than one quarter of the time observed. The study concluded that the return of seal numbers to pre-disturbance levels and the relatively regular seasonal cycle in abundance throughout the area counter the idea that disturbances from powerboats may result in site abandonment (Johnson and Acevedo-Gutierrez, 2007). As a general statement from the available information, pinnipeds exposed to intense (approximately 110 to 120 decibels re: 20 μ Pa) non-pulse sounds often leave haulout areas and seek refuge temporarily (minutes to a few hours) in the water (Southall *et al.*, 2007).

There are three ways in which disturbance, as described previously, could result in more than Level B harassment of marine mammals. All three are most likely to be consequences of stampeding, a potentially dangerous occurrence in which large numbers of animals succumb to mass panic and rush away from a stimulus. The three situations are: (1) falling when entering the water at high-relief locations; (2) extended separation of mothers and pups; and (3) crushing of pups by large males during a stampede. However, NMFS does not expect any of these scenarios to occur at the proposed survey site.

Because hauled-out animals may move towards the water when disturbed, there is the risk of injury if animals stampede towards shorelines with precipitous relief (*e.g.*, cliffs). However, while high-elevation sites exist on the small island, the haulout sites consist of ridges with unimpeded and non-obstructive access to the water. If disturbed, the small number of hauled-out adult animals may move toward the water without risk of encountering barriers or hazards that would otherwise prevent them from leaving the area. Moreover, the proposed area would not be crowded with large numbers of Steller

sea lions during June or July, further eliminating the possibility of potentially injurious mass movements of animals attempting to vacate the haulout. Thus, in this case, NMFS considers the risk of injury, serious injury, or death to hauled-out animals as very low.

Finally, only adult Steller sea lions occupy the haulout site during June and July. No pups or breeding adults would be present during the proposed survey.

The probability of vessel and marine mammal interactions (*i.e.*, vessel strike) occurring during the proposed activities is unlikely due to main vessels slow operational speed around the island, which is typically 8 knots (9.2 miles per hour) coupled with the observer and BLM personnel continually scanning the water for marine mammals presence during transit to the island. Thus, NMFS does not anticipate that take would result from the movement of the main vessel or skiff.

Anticipated Effects on Marine Mammal Habitat

The only habitat modification associated with the proposed activity is the placement of a group of official U.S. survey markers into the ground. BLM would conduct the installation of the survey markers under the appropriate authorities (ANCSA) and would not use any power tools to set the markers.

NMFS expects that the presence of the surveyors would likely disturb any marine mammals present at the site. NMFS also expects that marine mammals would retreat to a distance where noise related to the use of shovels, digging bars, and mallets would not increase the disturbance. In most instances, wind and wave noise would also drown out the noise of the hand tools. At the conclusion of the survey, BLM would remove all survey equipment and would not leave any trash or field gear at the site.

NMFS does not anticipate that the proposed survey would result in any permanent

effects on the habitats used by the marine mammals in the proposed area, including the food sources they use (*i.e.*, fish and invertebrates). Based on the preceding discussion, NMFS does not anticipate that the proposed activity would have any habitat-related effects that could cause significant or long-term consequences for individual marine mammals or their populations.

Proposed Mitigation

In order to issue an incidental take authorization under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (where relevant).

Mitigation Measures

The BLM proposes to implement several mitigation measures to reduce potential take by Level B (behavioral disturbance) harassment. Measures include: (1) conducting slow and controlled approaches to the island by vessel and skiff as far away as possible from hauled out sea lions to prevent or minimize stampeding; (2) avoiding placing the skiff in the path of swimming sea lions that may be present; (3) beginning terrestrial activities as far away as possible from hauled out sea lions; (4) conducting slow movements to prevent or minimize stampeding; (5) avoiding loud noises (*i.e.*, using hushed voices); (6) avoiding pinnipeds along access ways to sites by locating and taking a different access way and vacating the area as soon as possible after completing the land survey; (7) monitoring the offshore area for predators (such as killer whales and white

sharks) and avoid flushing of pinnipeds when predators are observed in nearshore waters; and (8) using binoculars to detect pinnipeds before close approach to avoid being seen by animals.

BLM will use the methodologies and actions noted in this section which NMFS would include as mitigation measures in any issued Authorization to ensure that BLM mitigates impacts to marine mammals to the lowest level practicable. The primary method of mitigating the risk of disturbance to sea lions, which will be in use at all times, is the selection of judicious routes of approach to the survey site, avoiding close contact with sea lions hauled out on shore, and the use of extreme caution upon approach. In no case will BLM deliberately approach marine mammals. BLM personnel would select a pathway of approach to the survey sites that minimizes the number of marine mammals potentially harassed. In general, BLM personnel would stay inshore of sea lions whenever possible to allow slow and controlled egress to the ocean. The survey would last for approximately 6-10 hours, after which personnel would vacate the survey site. Any marine mammals that may have been disturbed by the presence of surveyors could re-occupy the site after completion of the survey.

Mitigation Conclusions

NMFS has carefully evaluated BLM's proposed mitigation measures in the context of ensuring that we prescribe the means of affecting the least practicable impact on the affected marine mammal species and stocks and their habitat. The evaluation of potential measures included consideration of the following factors in relation to one another:

- The manner in which, and the degree to which, the successful implementation of the measure is expected to minimize adverse impacts to marine mammals;
- The proven or likely efficacy of the specific measure to minimize adverse impacts as planned; and
- The practicability of the measure for applicant implementation.

Any mitigation measure(s) prescribed by NMFS should be able to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed here:

1. Avoidance or minimization of injury or death of marine mammals wherever possible (goals 2, 3, and 4 may contribute to this goal).
2. A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to vessel or visual presence that NMFS expects to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
3. A reduction in the number of times (total number or number at biologically important time or location) individuals exposed to vessel or visual presence that NMFS expects to result in the take of marine mammals (this goal may contribute to 1, above, or to reducing harassment takes only).
4. A reduction in the intensity of exposures (either total number or number at biologically important time or location) to vessel or visual presence that NMFS expects to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

5. Avoidance or minimization of adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

6. For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation.

Based on the evaluation of BLM proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring

In order to issue an incidental take authorization for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth “requirements pertaining to the monitoring and reporting of such taking.” The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for Authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that NMFS expects to be present in the proposed action area.

BLM submitted a marine mammal monitoring plan in section 13 of their Authorization application. NMFS or BLM may modify or supplement the plan based on comments or new information received from the public during the public comment period.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

1. An increase in our understanding of the likely occurrence of marine mammal species in the vicinity of the action, (*i.e.*, presence, abundance, distribution, and/or density of species).
2. An increase in our understanding of the nature, scope, or context of the likely exposure of marine mammal species to any of the potential stressor(s) associated with the action (*e.g.*, sound or visual stimuli), through better understanding of one or more of the following: the action itself and its environment (*e.g.*, sound source characterization, propagation, and ambient noise levels); the affected species (*e.g.*, life history or dive pattern); the likely co-occurrence of marine mammal species with the action (in whole or part) associated with specific adverse effects; and/or the likely biological or behavioral context of exposure to the stressor for the marine mammal (*e.g.*, age class of exposed animals or known pupping, calving or feeding areas).
3. An increase in our understanding of how individual marine mammals respond (behaviorally or physiologically) to the specific stressors associated with the action (in specific contexts, where possible, *e.g.*, at what distance or received level).
4. An increase in our understanding of how anticipated individual responses, to individual stressors or anticipated combinations of stressors, may impact either: the long-term fitness and survival of an individual; or the population, species, or stock (*e.g.* through effects on annual rates of recruitment or survival).
5. An increase in our understanding of how the activity affects marine mammal habitat, such as through effects on prey sources or acoustic habitat (*e.g.*, through

characterization of longer-term contributions of multiple sound sources to rising ambient noise levels and assessment of the potential chronic effects on marine mammals).

6. An increase in understanding of the impacts of the activity on marine mammals in combination with the impacts of other anthropogenic activities or natural factors occurring in the region.

7. An increase in our understanding of the effectiveness of mitigation and monitoring measures.

8. An increase in the probability of detecting marine mammals (through improved technology or methodology), both specifically within the safety zone (thus allowing for more effective implementation of the mitigation) and in general, to better achieve the above goals.

As part of its Authorization application, BLM proposes to sponsor marine mammal monitoring, in order to implement the mitigation measures that require real-time monitoring, and to satisfy the monitoring requirements of the proposed Authorization. These include:

- The vessel would circle the island from the greatest distance feasible for accurate observation to allow the marine mammal observer (observer) to map and record the initial locations, numbers, and behaviors of Steller sea lions using the island before commencing the survey. The observer would use this information to recommend where BLM personnel should approach the survey area to minimize disruption to any Steller sea lions hauled out on the island.
- Once on land, the observer would record any changes in sea lion locations, numbers, or behaviors observed during the reconnaissance.

- The observer would post at a location (*e.g.*, a ridge or other high elevation area) to visually observe sea lions with no or minimal risk of modifying their behavior. If possible, the observer would also have the land survey crew in sight and would communicate with the surveyors using hand-held radios. The observer would advise the crew on the location and behavior of the sea lions to maximize the safety of both the sea lions and the crew.

Proposed monitoring requirements in relation to BLM's proposed activities would include species counts, numbers of observed disturbances, and descriptions of the disturbance behaviors during the monitoring surveys, including location, date, and time of the event. In addition, BLM would record observations regarding the number and species of any marine mammals either observed in the water or hauled out.

BLM can add to the knowledge of pinnipeds in the proposed action area by noting observations of: (1) unusual behaviors, numbers, or distributions of pinnipeds, such that any potential follow-up research can be conducted by the appropriate personnel; (2) tag-bearing carcasses of pinnipeds, allowing transmittal of the information to appropriate agencies and personnel; and (3) rare or unusual species of marine mammals for agency follow-up.

If at any time injury, serious injury, or mortality of the species for which take is authorized should occur, or if take of any kind of any other marine mammal occurs, and such action may be a result of the proposed land survey, BLM would suspend survey activities and contact NMFS immediately to determine how best to proceed to ensure that another injury or death does not occur and to ensure that the applicant remains in compliance with the MMPA.

Proposed Reporting

BLM would submit a draft report to NMFS Office of Protected Resources no later than 90 days after the expiration of the proposed Authorization, if issued. The report will include a summary of the information gathered pursuant to the monitoring requirements set forth in the proposed Authorization. BLM will submit a final report to the Director of the NMFS Office of Protected Resources within 30 days after receiving comments from NMFS on the draft report. If BLM receives no comments from NMFS on the report, NMFS will consider the draft report to be the final report.

The report will describe the operations conducted and sightings of marine mammals near the proposed project. The report will provide full documentation of methods, results, and interpretation pertaining to all monitoring. The report will provide:

1. A summary and table of the dates, times, and weather during all research activities.
2. Species, number, location, and behavior of any marine mammals observed throughout all monitoring activities.
3. An estimate of the number (by species) of marine mammals exposed to human presence associated with the survey activities.
4. A description of the implementation and effectiveness of the monitoring and mitigation measures of the Authorization and full documentation of methods, results, and interpretation pertaining to all monitoring.

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, vessel-strike, stampede, etc.), BLM personnel shall immediately cease the specified activities and immediately report the

incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and
- Photographs or video footage of the animal(s) (if equipment is available).

BLM shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. We will work with BLM to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. BLM may not resume their activities until notified by us via letter, email, or telephone.

In the event that BLM discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), BLM will immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248. The report

must include the same information identified in the paragraph above this section.

Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with BLM to determine whether modifications in the activities are appropriate.

In the event that BLM discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), BLM will report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248 within 24 hours of the discovery. BLM personnel will provide photographs or video footage (if available) or other documentation of the stranded animal sighting to us. BLM can continue their survey activities while NMFS reviews the circumstances of the incident.

Estimated Take by Incidental Harassment

Except with respect to certain activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

All anticipated takes would be by Level B harassment, involving temporary changes in behavior. NMFS expects that the proposed mitigation and monitoring

measures would minimize the possibility of injurious or lethal takes. NMFS considers the potential for take by injury, serious injury, or mortality as remote. NMFS expects that the presence of BLM personnel could disturb of animals hauled out close to the survey site and that the animals may alter their behavior or attempt to move away from the surveyors.

As discussed earlier, NMFS considers an animal to have been harassed if it moved greater than 1 m (3.3 ft) in response to the surveyors' presence or if the animal was already moving and changed direction and/or speed, or if the animal flushed into the water. NMFS does not consider animals that became alert without such movements as harassed.

For the purpose of this proposed Authorization, BLM proposed take estimates based on sea lion survey counts obtained from NMFS' National Marine Mammal (NMML) Steller Sea Lion Count Database and from researchers with extensive knowledge and experience of the survey location. Data from NMFS' National Marine Mammal (NMML) Steller Sea Lion Count Database indicate that approximately 80 adult Steller sea lions of the western DPS haul out on the small island mainly in late winter and early spring (NMML, 2015). However, use of that particular haulout decreases after May in the summer with NMML's database records (2000-2008) indicating a maximum of eight adults hauled out on the island during June or July (NMML, 2015; B. Fadely, Pers. Comm.).

These observations formed the basis of the actual number of marine mammals that may be subject to take. Based on best available information, NMFS estimates that the survey activities could potentially affect by Level B behavioral harassment up to 20

Steller sea lions over the course of the Authorization. This estimate represents less than one percent (0.0002) of the western DPS of Steller sea lions and accounts for a maximum disturbance of 20 animals during the one-day visit to the island. Actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at the time of the survey activities.

NMFS does not propose to authorize any injury, serious injury, or mortality.

NMFS expect all potential takes to fall under the category of Level B harassment only.

Encouraging and Coordinating Research

BLM would share observations and counts of marine mammals and all observed disturbances to the appropriate state and federal agencies at the conclusion of the survey.

Analysis and Preliminary Determinations

Negligible Impact

Negligible impact' is "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival" (50 CFR 216.103). The lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population level effects) forms the basis of a negligible impact finding. An estimate of the number of Level B harassment takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be "taken" through behavioral harassment, NMFS considers other factors, such as the likely nature of any responses (*e.g.*, intensity, duration), the context of any responses (*e.g.*, critical reproductive time or location, migration), as well as the number and nature of estimated Level A harassment takes, the number of estimated mortalities,

and effects on habitat.

Although BLM's survey activities may disturb sea lions hauled out on the island, NMFS expects those impacts to occur to a small, localized group of animals for a limited duration (*e.g.*, 6-10 hours in one day). Steller sea lions would likely become alert or, at most, flush into the water in reaction to the presence of BLM personnel during the proposed activities. Disturbance will be limited to a short duration, allowing adult sea lions to reoccupy the island within a short amount of time. Thus, the proposed action is unlikely to result in long-term impacts such as permanent abandonment of the haul-out.

BLM's activities would occur during the least sensitive time (*e.g.*, summer, June through July) for hauled out sea lions on the island. Only adult Steller sea lions occupy the haulout site during June and July. Thus, pups or breeding adults would not be present during the proposed one-day survey.

Moreover, BLM's mitigation measures regarding transit speed, island approaches, and survey site ingress and egress would minimize the potential for stampedes and large-scale movements. Thus, the potential for large-scale movements and stampede leading to injury, serious injury, or mortality is low.

NMFS proposes to authorize take for the Western DPS of Steller sea lion listed as endangered under the ESA and classified as a strategic stock and depleted under the MMPA. BLM's proposed action falls within an area designated as a major haulout for Steller sea lions under the critical habitat designations of the ESA. Steller sea lions spend much of their time in marine water but they do rest and breed on land. During the breeding and pupping season (late May to early July), reproductively active adult Steller sea lions occupy rookeries (terrestrial birthing sites) whereas non-breeding individuals

use haulouts (terrestrial resting sites). In this case, relatively small numbers (less than 10) of adult, non-reproducing, Steller sea lions use the island as a haulout during the months of June and July when the one-day survey would occur. Moreover, BLM's proposed activities would not significantly alter the physical or biological features of the critical habitat. Project related disturbances to Steller sea lion would result from stimuli related to vessel and human presence within the proposed area. However, the disturbances related to these activities are temporary in nature and not expected to permanently modify the critical habitat.

In summary, NMFS anticipates that impacts to hauled-out Steller sea lions during BLM's land survey activities would be behavioral harassment of limited duration (*i.e.*, less than one day) and limited intensity (*i.e.*, temporary flushing at most). NMFS does not expect stampeding, and therefore injury or mortality to occur (see "Mitigation" for more details). Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from BLM's proposed survey activities will have a negligible impact on the affected marine mammal species or stocks.

Small Numbers

As mentioned previously, NMFS estimates that BLM's proposed activities could potentially affect, by Level B harassment only, one species of marine mammal under our jurisdiction. NMFS estimates that the survey activities could potentially affect by Level B behavioral harassment up to 20 Steller sea lions over the course of the proposed Authorization. This estimate represents less than one percent (0.0002) of the western DPS

of Steller sea lions and accounts for a maximum disturbance of 20 animals during the one-day visit to the island. For the Western DPS of Steller sea lion, this estimate is small (less than one percent) relative to the population size of 82,516 animals. However, actual take may be slightly less if animals decide to haul out at a different location for the day or if animals are foraging at the time of the survey activities. Based on the analysis contained in this notice of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the mitigation and monitoring measures, NMFS preliminarily finds that BLM's proposed activities would take small numbers of marine mammals relative to the populations of the affected species or stocks.

Impact on Availability of Affected Species or Stock for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by this action. The proposed activity occurs south of the latitude that NMFS' categorizes as within Arctic waters (*i.e.*, north of 60° N). Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act (ESA)

For the reasons already described in this notice, NMFS has determined that the issuance of a proposed Authorization may have an effect on species or critical habitat protected under the ESA (specifically, the Steller sea lion). Under section 7 of the ESA, BLM has initiated formal consultation with NMFS on the proposed land survey. NMFS (*i.e.*, National Marine Fisheries Service, Office of Protected Resources, Permits and Conservation Division) will also consult internally with NMFS on the proposed issuance

of an Authorization under section 101(a)(5)(D) of the MMPA. NMFS and BLM will conclude the consultation prior to a determination on the issuance of the Authorization.

National Environmental Policy Act (NEPA)

To meet NEPA requirements for the issuance of a proposed Authorization to BLM, NMFS intends to prepare an Environmental Assessment (EA) on NMFS' proposed action. Prior to making a final decision on the issuance of an Authorization, NMFS would decide whether or not to issue a Finding of No Significant Impact. NMFS will review all comments submitted in response to this notice to complete the NEPA process prior to making a final decision on the Authorization request.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes issuing an Incidental Harassment Authorization to BLM for take incidental to conducting a one-day field-based land survey of cultural sites located on a small island within the eastern Aleutian Islands archipelago, during the period of June 1, 2015 through July 31, 2015, provided they incorporate the previously mentioned mitigation, monitoring, and reporting requirements.

Draft Proposed Authorization

This section contains the draft text for the proposed Authorization. NMFS proposes to include this language in the Authorization if issued.

Proposed Authorization Language

The Bureau of Land Management (BLM) - Alaska Division of Lands and Cadastral, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513 and/or its designees (holders of the Authorization) are hereby authorized under section 101(a)(5)(D) of the

Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) to harass small numbers of marine mammals incidental to conducting a one-day field-based land survey of cultural sites.

1. This Authorization is valid from June 1 through July 31, 2015.

2. This Authorization is valid only for land survey activities that would occur in the following specified geographic area: the island within the eastern Aleutian Islands archipelago identified in BLM's application.

3. Species Authorized and Level of Takes

a. The taking, by Level B harassment only, is limited to the following species: 20 Steller sea lions (*Eumetopias jubatus*).

b. The taking by injury (Level A harassment), serious injury or death of any of the species listed in Condition 3(a) or the taking of any kind of any other species of marine mammal is prohibited and may result in the modification, suspension or revocation of this Authorization.

c. The taking by injury (Level A harassment), serious injury, or death of any of the species listed in condition 3(b) of the Authorization or any taking of any other species of marine mammal is prohibited and may result in the modification, suspension, or revocation of this Authorization.

4. General Conditions

A copy of this Authorization must be in the possession of the BLM, its designees, and field crew personnel operating under the authority of this Authorization at all times. BLM must also abide by the Terms and Conditions included within the Biological Opinion's Incidental Take Statement.

5. Mitigation Measures

BLM and its designees must implement the following mitigation measures:

- a. Conduct a slow and controlled approach to the island by vessel and skiff as far away as possible from hauled out sea lions to prevent or minimize stampeding.
- b. Ensure that the main vessel and skiff approach the island at a reasonably slow speed (*i.e.*, no faster than 8 knots (9.2 miles per hour)).
- c. Monitor for offshore predators such as great white sharks (*Carcharodon carcharias*) or killer whales (*Orcinus orca*) prior to accessing the island. If BLM and/or its designees see predators in the area, they must not disturb the animals until the area is free of predators.
- d. Avoid placing the skiff in the path of swimming sea lions that may be present in the area.
- e. Select a pathway of approach to the survey site that minimizes the number of marine mammals harassed and conduct slow movements while accessing and exiting the island to prevent or minimize stampeding.
- f. Maintain a quiet working atmosphere, avoid loud noises, and use hushed voices in the presence of hauled out pinnipeds.
- g. Initiate the land survey away from hauled out sea lions as far away as practicable. If BLM and/or its designees need to survey in the direction of hauled out sea lions, proceed in a slow and controlled manner to minimize disturbance and allow animals to slowly flush into the water.
- h. Use binoculars to detect pinnipeds before close approach to avoid being seen by animals.

6. Monitoring

The holder of this Authorization is required to conduct monitoring of marine mammals present at the survey site. BLM and/or its designees shall have at least one NMFS-qualified biologist serve as a marine mammal observer to evaluate incidental take and implement mitigation measures.

a. BLM and/or its designees shall record the following:

i. Species counts (with numbers of adults/juveniles); and:

ii. Numbers of disturbances, by species and age, according to a three-point scale of intensity including: (1) Head orientation in response to disturbance, which may include turning head towards the disturbance, craning head and neck while holding the body rigid in a u-shaped position, or changing from a lying to a sitting position and/or slight movement of less than 1 meter; “alert”; (2) Movements in response to or away from disturbance, typically over short distances (1-3 meters) and including dramatic changes in direction or speed of locomotion for animals already in motion; “movement”; and (3) All flushes to the water as well as lengthier retreats (>3 meters); “flight”.

iii. Information on the weather, including the tidal state and horizontal visibility.

b. If applicable, the observer shall note observations of marked or tag-bearing pinnipeds or carcasses, as well as any rare or unusual species of marine mammal.

c. If applicable, the observer shall note the presence of any offshore predators (date, time, number, and species).

7. Reporting

The holder of this Authorization is required to:

a. Draft Report: Submit a draft monitoring report to the Division Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service

within 90 days after the Authorization expires. NMFS will review the Draft Report which is subject to review and comment by NMFS. BLM must address any recommendations made by NMFS in the Final Report prior to submission to NMFS. If NMFS decides that the draft final report needs no comments, NMFS will consider the draft report as the Final Report.

b. Final Report: BLM shall prepare and submit a Final Report to NMFS within 30 days following resolution of any comments on the draft report from NMFS.

8. Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the authorization, such as an injury (Level A harassment), serious injury, or mortality (*e.g.*, vessel-strike, stampede, etc.), BLM and/or its designees shall immediately cease the specified activities and immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Description and location of the incident (including water depth, if applicable);
- Environmental conditions (*e.g.*, wind speed and direction, Beaufort sea state, cloud cover, and visibility);
- Description of all marine mammal observations in the 24 hours preceding the incident;
- Species identification or description of the animal(s) involved;
- Fate of the animal(s); and

- Photographs or video footage of the animal(s) (if equipment is available).

BLM shall not resume its activities until NMFS is able to review the circumstances of the prohibited take. NMFS will work with BLM to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. BLM may not resume their activities until notified by us via letter, email, or telephone.

In the event that BLM discovers an injured or dead marine mammal, and the marine mammal observer determines that the cause of the injury or death is unknown and the death is relatively recent (*i.e.*, in less than a moderate state of decomposition as we describe in the next paragraph), BLM will immediately report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248. The report must include the same information identified in the paragraph above this section. Activities may continue while NMFS reviews the circumstances of the incident. NMFS would work with BLM to determine whether modifications in the activities are appropriate.

In the event that BLM discovers an injured or dead marine mammal, and the lead visual observer determines that the injury or death is not associated with or related to the authorized activities (*e.g.*, previously wounded animal, carcass with moderate to advanced decomposition, or scavenger damage), BLM will report the incident to the Division Chief, Permits and Conservation Division, Office of Protected Resources, NMFS, at 301-427-8401 and the Alaska Regional Stranding Coordinator at (907) 586-7248 within 24 hours of the discovery. BLM personnel will provide photographs or video footage (*if available*) or other documentation of the stranded animal sighting to us. BLM

can continue their survey activities while NMFS reviews the circumstances of the incident.

Request for Public Comments

NMFS requests comments on our analysis, the draft authorization, and any other aspect of this notice of proposed Authorization for the proposed activities. Please include any supporting data or literature citations with your comments to help inform our final decision on BLM's request for an Authorization.

Dated: April 13, 2015.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

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